UNITED STATES DEPARTMENT OF COMMERCE
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MAILED

DEC 18 1989

GROUP 120

☒ This application has been examined ☐ Responsive to communication filed on _____ ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), — days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. ☒ Notice of References Cited by Examiner, PTO-892.
2. ☐ Notice re Patent Drawing, PTO-948.
3. ☐ Notice of Art Cited by Applicant, PTO-1449.
4. ☐ Notice of Informal Patent Application, Form PTO-152.
5. ☐ Information on How to Effect Drawing Changes, PTO-1474.
6. ☐ _____

Part II SUMMARY OF ACTION

1. ☒ Claims 1-21 are pending in the application.
   Of the above, claims 10-21 are withdrawn from consideration.
2. ☐ Claims _____ have been cancelled.
3. ☐ Claims _____ are allowed.
4. ☒ Claims 1-9 are rejected.
5. ☐ Claims _____ are objected to.
6. ☐ Claims _____ are subject to restriction or election requirement.
7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable. ☐ not acceptable (see explanation or Notice re Patent Drawing, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____ has (have) been ☐ approved by the examiner. ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed on _____, has been ☐ approved. ☐ disapproved (see explanation).
12. ☐ Acknowledgment is made of the claim for priority under U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. _____; filed on _____.
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

EXAMINER'S ACTION

In a telephonic communication with Mr. Tinney , attorney for applicant on December 12, 1989 the examiner required restriction to one of the following inventions under 35 U.S.C. 121:

I. Claims 1-9, drawn to methods of contraception, classified in Class 514, subclass 171.

II. Claims 10-21, drawn to contraceptive kits, classified in Class 206, subclass 42+.

The inventions are distinct as the methods of contraception can be practiced by a means that does not involve a kit (e.g. by hand).

Applicant elected the invention of Group I, drawn to methods of contraception, with traverse. Claims 1-9 will be considered in toto. Claims 10-21 are hereby withdrawn from consideration and should be cancelled.

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

> A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
>
> Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same

person.

Claims 1-9 are rejected under 35 U.S.C. § 103 as being unpatentable over Pasquale who teaches contraceptive methods involving the use of multiple variable length phases in which an estrogen/progestogen composition of varying dosages may be used wherein the level of estrogen is increased in each phase. The determination of particular active agents; dosages and phase lengths are matters of obvious alternative to the practicing artisan absent evidence to the contrary.

Claims 1-9 are rejected under 35 U.S.C. § 103 as being unpatentable over Dejager, Pitchford and Edgren.

The references show a method of contraception using a combination-type (estrogen and progestogen) sequential preparation for oral contraception. The method comprises the administration of compounds such as ethinyl estradiol and norethindrone in three and four phases. The references show that the dosages of the active agents may be varied or held constant from phase to phase. In view of the totality of the disclosures, the subject matter recited in the claims is deemed obvious therefrom and not seen to be patentable.

Any inquiry concerning this communication should be directed to Joseph Lipovsky at telephone number (703) 557-3920.

J. Lipovsky

Joseph A. Lipovsky

JOSEPH A. LIPOVSKY
EXAMINER
ART UNIT 125